IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

Writ Appeal No.1593 of 1999 and
WAMP.No.321 of 2007

1.N.Mangalchand Vaid
2.M.Durgachand Vaid
3.M.Lakshmichand Vaid
4.M.Guruchand Vaid
5.M.Huckmachand Vaid ... Appellants
(the 5th appellant was declared as major and
his father/the 1st appellant was discharged
from the guardianship by the order of
the Court dated 11.8.1999 made in
CMP.13047 & 13048/1999)

Vs.

1.The Secretary to Government
of Tamil Nadu,
Forests and Fisheries Department,
Fort St.George, Madras-600009.

2.The Collector of the Nilgiris,
Uthagamandalam

3.The Personal Assistant (General)
to the Collector of the Nilgiris and
the Secretary of the Committee
constituted under the TNPPF Act, Udhagamandalam

4.The District Forest Officer,
Gudalur Division, Calicut Road,
Gudalur, Nilgiris-643221. ... Respondents

WEB COPY

Writ Appeal filed under Clause 15 of the Letters Patent as against the order of the learned single Judge dated 3.6.1999 made in W.P.No.17943 of 1990 presented under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent relating for the impugned notification dated 1.10.1981 published by the Nilgiris District, Gazette No.9,

https://hcservices.ecourts.gov.in/hcservices/

page 32 and quash the same and further direct the Respondents to direct invoking the provisions of the Tamil Nadu Prevention of Private Forests Act in respect of these Lands and trees thereon which are notified and registered coffee plantations.

For appellants : Mr.A.L.Somayaji, Senior Counsel for Mr.Satish Parasaran

For respondents : Mr.S.Ramaswamy, AAG assisted by Mr.S.Rajasekar, Spl.G.P. (Forest)

JUDGMENT

ELIPE DHARMA RAO, J.

The petitioners are the joint owners of lands in S.No.236/8A etc. of Masinagudi village, Ootacamund Taluk, Nilgiris District, in an extent of 883.68 acres, named as Singara Estate. The major portion of the said lands is being used to raise coffee plantations besides cultivating pepper plantation, fruit orchards etc. The petitioners have planted shade trees for the purpose of the coffee plantations and rearing the same to provide shade for the coffee plants. While so, the Government of Tamil Nadu issued a Notification dated 1.10.1981, which was published in the Nilgiris District Gazette No.9 at Page No.32, under the Tamil Nadu Preservation of Private Forests Act, 1949, as amended by Act 68 of 1979, declaring that the private forests specified in the schedule appended thereto are to be 'forests' for the purpose of the said Acts. The schedule appended to the said Notification contains the properties now belong jointly to the petitioners. This notification is impugned by the petitioners, by filing W.P.No.17943 of 1990 before this Court.

2. The case of the petitioners is that the lands are ryotwari patta lands, having been acquired by them under a Will left by the father of the first petitioner and the grand father of the other petitioners and that pattas have also been granted for these lands as early as in 1885 to the predecessors-in-title of the petitioners, which had later been transferred and issued in the names of all the petitioners.

3. The petitioners further state that it is essential that the fully grown shade trees, which they have grown for providing shade to the coffee plantations, which get silviculturally matured, to be removed from time to time as otherwise they would not only cease to serve the purpose for which they are planted but would also cause danger and havoc to the coffee plantations, if they fall by themselves. The petitioners would further submit that the declaration of their lands as 'forest' is absolutely illegal and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

further submit that no notice or opportunity was given by the second respondent before issuing the impugned notification.

4. The respondents have filed a counter affidavit wherein they have admitted that the lands are ryotwari patta lands and belongs to the father of the first petitioner. They would further submit that to preserve the private forest wealth and to prevent the indiscriminate destruction of private forest and interference with customary and prescriptive rights therein, the Government of Tamil Nadu had enacted the Preservation of Private Forests Act, which is not prohibitory in nature but only preventive in nature and therefore, the petitioners can apply to the competitive authorities for permission to cut and remove the trees and there is absolutely no denial of any rights of the petitioners to carry out any improvements which would not amount to denude the forest and that the provisions of the Act only stipulate certain guidelines and restrictions to regulate the indiscriminate cutting of the trees in a private forest. They have also stated that all the formalities with regard to the notifications were dealt with by the father of the first petitioner Mr.Nathamal Vaid and it is not mandatory on the part of the respondents to issue any prior notice to the petitioners before the notification and the notification was issued only as per the provisions of the Act and therefore the notification is absolutely valid and within the jurisdiction of the respondents.

5. The respondents would further submit that there is nothing contrary in the Act as alleged by the petitioner and the notification issued by the Collector of the District under Section (iii) will apply only to the private patta lands owned by private individuals; that the petitioners can get permission from the Committee to cut the trees which are silviculturally matured and obtaining such permission will not amount to violation of any fundamental rights as alleged; that the purpose and object of the Act is only to preserve the forest in the larger interest of nation and therefore, even though the lands are their own private lands, they cannot be permitted to violate the provisions of the Act and the Government has framed certain Rules in the Act without affecting the rights of the individuals and all the provisions of the Act have been enacted after careful consideration and therefore there is nothing arbitrary in the Act. On such grounds, the respondents prayed to dismiss the writ petition.

WEB COPY

6. The learned single Judge has dismissed the writ petition upholding the contentions raised on the part of the respondents, resulting in filing of this writ appeal by the writ petitioners.

7. During the pendency of this appeal, the appellants have taken out WAMP.No.321 of 2007 raising additional grounds such as that the very notification is liable to be quashed on the short ground that it has been issued under an Act, which is not applicable and cannot be made applicable in respect of the appellants' lands. They would

https://hcservices.ecourts.gov.in/hcservices/

state that their lands situate in Udhagamandalam Taluk, Nilgiris District, which are governed by the Tamil Nadu Hill Areas (Prevention of Trees) Act, 1955 by G.O.Ms.No.1225, dated 12.12.1985 and this Act being a special law, will prevail over a general law viz. The Tamil Nadu Preservation of Private Forest Act, 1949, under which the impugned notification was issued. They would also submit that the impugned notification is also liable to be quashed for the reason that it has been published not in the Tamil Nadu Government Gazette as required, but in the Nilgiris District Gazette alone; that inasmuch as the impugned notification has been issued not by the Committee but by the second respondent individually, the impugned notification does not conform to the mandatory requirements under the Private Forests Act and hence is liable to be struck down as ultra vires the provisions of the said Act.

8. A counter affidavit has been filed by the respondents to the additional grounds raised by the petitioners, as not permitted.

9. However, in order to give a quietus to the entire issue and since the additional grounds raised herein by the petitioners are nothing but the extension of their grounds urged before the learned single Judge, we permit the petitioners/appellants to raise the additional grounds and thus allowing WAMP.No.321 of 2007, now we shall proceed to discuss and decide the main issues involved in the case.

10. The object of the Tamil Nadu Preservation of Private Forests Act, 1949 is:

> "to prevent the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes"

11. As could be seen from Section 1(2)(ii) of the said Act, it applies to 'private forests situated in other areas in the State of Tamil Nadu and having a contiguous area exceeding 2 hectares which may be declared by the Committee to be forests for the purposes of this Act, by notification, in the District Gazette, but does not apply to reserved forests constituted under the Tamil Nadu Forest Act, 1882, and lands at the disposal of the Government as defined in that Act.' The explanation to this sub-section reads as follows:

> "A private forest exceeding 2 hectares in extent shall not cease to be such by reason only on the fact that, in a portion thereof, trees, shrubs or reeds are felled or cut with or without the permission of the committee or lands are cultivated, or rocks, roads, tanks, rivers or the like exist; nor shall the area of such forest cease to be contiguous by reason only of the existence of all or any of the aforesaid circumstances."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. Admittedly, the lands belonging to the petitioners are situated in Nilgiris District. As per G.O.Ms.No.1225, dated 1.12.1985, the Government has notified the entire Nilgiris District as 'hill area' for the purpose of the said Act and therefore, the petitioners would contend that only the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 would apply to their case and not Tamil Nadu Preservation of Private Forests Act, 1949, under which the notification has been issued. It is to be mentioned that the impugned notification dated 1.10.1981 was issued long prior to this G.O.Ms.No.1225, dated 1.12.1985. Therefore, prior to this notification, only the Tamil Nadu Preservation of Forests Act would apply to the Nilgiris District, where the lands of the appellants situate. Therefore, the contention of the appellants that the notification should have been issued only under Tamil Nadu Hill Area (Preservation of Trees) Act has no legs to stand before us. Therefore, this contention raised on the part of the appellants is rejected.

13. At this juncture, we feel it appropriate to quote the object of the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955, which is an 'Act to provide for the regulation of the cutting of trees and the cultivation of land in hill areas in the State of Tamil Nadu' and it has been enacted since 'there has been indiscriminate cutting of trees in hill stations in the State of Tamil Nadu involving large-scale deforestation and resulting in considerable soil erosion and whereas with a view to prevent deforestation and soil erosion and also to preserve the special characteristics of the hill areas as regards landscape, vegetal cover and climate, it is necessary to regulate the cutting trees also the cultivation of land in hill areas in the State of Tamil Nadu'.

14. From a comparative reading of the applicability clauses in both the Acts, it is clear that while the Tamil Nadu Preservation of Private Forests Act, 1949, would apply to private forests having a contiguous area exceeding two hectares, which may be declared by the Committee to be forests besides the forests situated in estates as defined in the Tamil Nadu Estate Land Act, 1938, the Tamil Nadu Hill Areas (Preservation of Trees) Act, applies to all hill areas in the State. Admittedly, the petitioners lands are in a contiguous area of exceeding two hectares. Therefore, there is no bar for the Government in declaring such a contiguous area exceeding two hectares of land as a 'private forest'.

15. In support of his arguments that the Hill Areas Act is a Special Act and the Private Forests Act being a general Act, the Hill Areas Act would have an overriding effect, the learned senior counsel for the appellants would also rely on an order passed by the learned single Judge of this Court in A.MAHESH AND OTHERS vs. THE K.K.COLLEGE OF PHARMACY [2003 (4) CTC 657], wherein it has been held:

"When both the enactments are traceable to the power of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

same legislature, on the same subject viz., the Parliament, the later enactment viz., the AICTE Act which is a special enactment insofar as laying down the norms and standards for courses, etc., shall override the provisions of Pharmacy Act ...."

16. There is no denial or quarrel with regard to the well established principle of law that the provisions of any Special Act would prevail over the general Act. But, in the case on hand, nowhere in the Hill Act it has been mentioned that it is in supercession of any of the Acts in existence particularly, Act XXVII of 1949. Therefore, the Hill Act would be an Act in addition but not in derogation or in supercession or in exclusion of Act XXVII of 1949, so as to say that the Hill Act, being a Special Act, would have overriding effect on a general Act like Act XXVII of 1949. Therefore, the judgment of the Honourable Apex Court in SRI ATHMANATHASWAMI DEVASTHANAM vs. K.GOPALASWAMI AIYANGAR [1963 (3) SCR 763], which was delivered in the context of the permanent lease right of occupancy of a ryot regarding waste lands brought under cultivation, relied on by the learned senior counsel for the appellants, also does not apply to the facts of the case on hand. Further more, as has already been held supra, the Hill Areas Act has been made applicable to Nilgiris District long after the impugned notification, by G.O.Ms.No.1225, dated 1.12.1985.

17. At this juncture, it is relevant to point out that the Honourable Apex Court in Writ Petition (Civil) No.202 of 1995 (T.N.GODAVARMAN THIRUMALKAD vs. UNION OF INDIA AND OTHERS), dated 12.12.1996, considering the protection and conservation of the forests throughout the country, after hearing the Government of India as well as all the State Governments, had issued certain interim directions to various State Governments throughout the country. The directions issued by the Honourable Apex Court, so far as the State of Tamil Nadu is concerned, are extracted hereunder:

"IV. FOR THE STATE OF TAMIL NADU:

1. There will be a complete ban on felling of trees in all "forest areas". This will however not apply to:-

a) trees which have been planted and grown and are not spontaneous growth, and

b) are in areas which were not forests earlier, but were cleared for any reason.

....

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as sunder:

a) The felling of shade trees in these plantations will be -

i) limited to trees which have been planted and not those which have grown spontaneously;

ii) limited to the species identified in the TANTEA reports;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and
iv) under the supervision of the statutory committee constituted by the State Government....."

18. A vehement argument would be advanced on the part of the appellants by the learned senior counsel that the lands in question are ryotwari lands and pattas were also issued in the name of the predecessors-in-title of the appellants, which were later transferred in their names, and therefore, the impugned notification issued under the Tamil Nadu Preservation of Private Forests Act is bad in law and is liable to be quashed. He would also submit that no notice was issued to the land owners before issuing such notification, which would also make the impugned notification illegal, being in violation of principles of natural justice. For this purpose, he would invite the attention of this Court to an order passed by a learned single Judge of this Court as early as in the year 1980 in SIRUMALAI KANAKASABAPATHY POONJOLAI COMPANY LIMITED BY ITS MANAGING DIRECTOR K.M.J.JOSEPH vs. THE STATE OF TAMIL NADU REPRESENTED BY THE SECRETARY TO GOVERNMENT, FOREST AND FISHERIES DEPARTMENT, FORT ST.GEORGE, MADRAS-9 AND ANOTHER [1980 MLJ 202], wherein it has been held:

"The mere existence of shrubs and jungle or wild and natural growth by itself will not make a land a forest. Even the meaning given in the Random House Dictionary for the word 'forest' is to the effect that a forest is an extensive area preserving some or all of its primitive wildness and usually having game or wild animals in it. But the Madras Estates Land Act and the Madras Estates Abolition Act did not treat the lands as non-cultivable lands and therefore, they are to be treated as ryoti lands. When once they are treated as ryoti lands and ryotwari patta had been issued, the petitioner is entitled to hold the lands as not forest lands and the Preservation of Private Forests Act could not be applied to such a land. The impugned notification is beyond the jurisdiction of the District Collector."

"The principles of natural justice require that the owners of lands should be given notice to show cause against such notification, otherwise any other construction would lead to an assumption of an arbitrary power irrespective of whether the lands in question are private forest lands or not. In fact the circumstances of the present case show a special need for issue of such a notice to the petitioner. The District Forest Officer was a party to the proceedings under Section 63 of the Madras Estates Abolition Act when it was declared as a forest and even in the ryotwari patta proceedings, he had taken up the matter in appeal and revision against the order of the Settlement Officer granting patta and it is at his instance that the Collector seems to have made this notification. Therefore the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

notification of the Collector is in violation of principles of natural justice and accordingly it is liable to be set aside."

19. This plea of the appellants was strongly rebutted by the respondents on the ground that the impugned notification issued by the Collector will apply only to the private patta lands owned by the private individuals and it is not mandatory on the part of the respondents to issue any prior notice to the appellants before the notification was issued since it was issued only as per the provisions of the Act and that all the formalities with regard to the notification were dealt with by the father of the first appellant viz. Mr.Nathamal Vaid. We find force in the argument advanced on the part of the respondents, since in the Tamil Nadu Preservation of Private Forests Act, 1949, under which the impugned notification has been issued, only a notification is contemplated and not individual notices to the land owners.

20. Further more, the above judgment of the learned single Judge of this Court, though not binding on this Bench, would have only a persuasive value and the same could very well be distinguished on facts, since in that case, there was already a declaration under Section 63 of the Abolition Act, which has become final and binding on the parties, that it is not a 'forest' within the meaning of Estates Land Act, which situation is absent in the case on hand. Further, in the light of the categorical directions issued by the Honourable Apex Court, extracted supra, the other judgments rendered contra by the lower forums of law, would get diluted/nullified. Therefore, the judgment of the learned single Judge, relied on by the learned senior counsel for the appellant has no application to the case on hand.

21. The other point urged on the part of the appellants is that the impugned notification is liable to be quashed for the reason that it has been published not in the Tamil Nadu Government Gazette, as required, but in the Nilgiris District Gazette alone. This argument cannot be accepted since as per Section 2(iii) of the Tamil Nadu Preservation of Private Forests Act, 1949, the notification is required to be issued only in the District Gazette, which has been perfectly complied with by the respondents.

22. The other argument advanced on the part of the appellants is that as per the Amended Act 68 of 1979, the power to issue a notification vests only with the Committee constituted under Section 2-A of the Private Forests Act and therefore, the notification issued by the District Collector is bad in law.

23. At this juncture, it is to be mentioned that the District Collector is the Chairman of the Committees constituted both under the Tamil Nadu Preservation of Private Forests Act and the Tamil Nadu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Hill Areas (Preservation of Trees) Act. Therefore, even if the notification is issued by the District Collector, but not by the Committee headed by him, it could only be treated as an irregularity and definitely not an illegality. It is now a well established principle of law that such irregularities will not vitiate the entire proceedings, since no prejudice has been caused to the land owners.

24. It is to be mentioned that the provisions of both the Acts are only regulatory and preventive in nature to prevent the indiscriminate destruction of the forests and the procedure contemplated is also very lucid and in case there is any rhyme or reason for the land owners to remove the shade trees which are fully grown and which get silviculturally matured, they could very well approach the Committees constituted for permission and no case of any arbitrariness or discrimination adopted on the part of the said Committees has been brought to our notice.

25. A social responsibility is cast on every individual to prevent deforestation. The laudable and lucid laws enacted to preserve Mother Nature intact for the welfare of the Society and future generations, like the Tamil Nadu Preservation of Private Forests Act, 1949, should be strictly adhered to, lest, the repercussions would be very serious affecting the ecological balance, leading to destruction and chaos.

26. The learned single Judge has considered all the facts and circumstances of the case in their proper perspective and has arrived at an irresistible conclusion of dismissing the claim of the appellants herein. For all the above discussions, we also find no ground to cause our interference into the well considered and merited order passed by the learned single Judge. Accordingly, this Writ Appeal fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rao

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To
1.The Secretary to Government
of Tamil Nadu,
Forests and Fisheries Department,
Fort St.George, Madras-600009.

2.The Collector of the Nilgiris,
Uthagamandalam

3.The Personal Assistant (General)
to the Collector of the Nilgiris and
the Secretary of the Committee
constituted under the TNPPF Act, Udhagamandalam

4.The District Forest Officer,
Gudalur Division, Calicut Road,
Gudalur, Nilgiris-643221.

+ 1 CC To Mr. Sathish Parasaran, Advocate SR NO.69870

+ 1 CC to the Spl. Government Pleader(Taxes) SR NO 69844

W.A.No.1593 of 1999

tej[co]
gp/30.11.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/